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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,250	06/22/2000	Fabio M. Chiussi	Chiussi 19-7	7832

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LAW OFFICE OF GREGORY C. RANIERI/AGERE SYSTEMS INC
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EXAMINER

ABELSON, RONALD B

ART UNIT PAPER NUMBER

2666

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/599,250

Applicant(s)

CHIUSSI ET AL.

Examiner

Ronald Abelson

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

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Regarding independent claims 1, 16, and 21, applicant lists the basis for the traversal on page 1.

1. Shinohara stores received ATM cells on a class and output line basis not an input basis. This limitation is not in the claims. Applicant claims storing received data packets associated with said traffic flows in a respective input buffer wherein each respective input buffer is associated with a particular individual input of the packet switch. As shown in the rejection, Shinohara teaches Shinohara teaches storing received data packets associated with said traffic flows in a respective input buffer (fig. 1 box 23) wherein each respective input buffer is associated with a particular input of the packet switch (fig. 1 box 21).
2. Shinohara's second "scheduler" does not assign bandwidth. As previously shown, Shinohara teaches assigning bandwidth to said selected data packets according to a second plurality of schedulers (fig. 1 boxes 109, col. 7 lines 12-15). Note, by controlling the competition between cell transfer requests, the examiner maintains that the interclass priority control section (fig. 1 box 109) is assigning bandwidth to the selected data packets. Regarding a second plurality of schedulers, a plurality of interclass priority control sections is shown (fig. 8 boxes 109).
3. Shinohara does not adapt the operation of at least one scheduler. As previously shown, Shinohara teaches adapting the operation of at least one of said first and second schedulers in response to a determination that a utilization level of any output buffer has exceeded a threshold parameter (fig. 1 boxes 30, 102, 20, col. 8 lines 6-20, input buffer module section 20 ceases to transmit cells).
4. Shinohara does not connect his backpressure circuit to the input buffers, this limitation is shown in the previously recited passage (the output buffer module section 30 originates the back pressure signal to all input buffer module sections, col. 8 lines 15-17)

On page 12 last paragraph, applicant contends, "Nowhere does Shinohara teach that the traffic flows should be grouped on a per-input basis". This limitation is not in the claims.

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The claims state, "grouping said traffic flows within a respective input buffer on at least a QoS guarantee basis". As shown previously, Shinohara teaches grouping said traffic flows within a respective input buffer on at least a QoS guarantee level (fig. 1 box 24 25, CBR, VBR, ABR, UBR, col. 6 line 65 - col. 7 line 2).

On page 13, applicant contends Shinohara does not have a second scheduler that assigns bandwidth. The examiner disagrees. As previously shown Shinohara teaches assigning bandwidth to said selected data packets according to a second plurality of schedulers (fig. 1 boxes 109, col. 7 lines 12-15). Note, by controlling the competition between cell transfer requests, the examiner maintains that the interclass priority control section (fig. 1 box 109) is assigning bandwidth to the selected data packets. Regarding a second plurality of schedulers, a plurality of interclass priority control sections is shown (fig. 8 boxes 109).

On page 14 paragraph 2, the applicant contends that Shinohara does not show the backpressure signals adapt the operation of at least one of the first and second schedulers. As previously shown, Shinohara teaches adapting the operation of at least one of said first and second schedulers in response to a determination that a utilization level of any output buffer has exceeded a threshold parameter (fig. 1 boxes 30, 102, 20, col. 8 lines 6-20, input buffer module section 20 ceases to transmit cells).


Regarding claims 10, 20, and 22, on page 15 last paragraph and page 16 1st paragraph, applicant contends that the third scheduler in Shinohara, element 113, resides in the output section, not the switch fabric. The examiner maintains that the core switch 102 and the output buffer 30 can be viewed as one unit.

Regarding claims 7, 18, and 23, that there is no known motivation from the references to incorporate the guaranteed bandwidth scheduler of Regache within the second scheduler of Shinohara (fig. 1 box 109) Applicant is reminded, "The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or

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all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art at the time the invention was made. See *In re Keller* 642 F.2d 413, 208 USPQ 871 (CCPA 1981)."

Regarding applicant's arguments with respect to claims 8 and 24, see pg. 18,19, the same arguments presented with respect to claims 7, 8, and 23 apply


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